

DEC 13 2000

FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

STATE OF NEBRASKA)	FINDINGS OF FACT,
DEPARTMENT OF INSURANCE,)	CONCLUSIONS OF LAW,
)	RECOMMENDED ORDER AND
PETITIONER,)	ORDER
)	
vs.)	
)	CAUSE NO.: A-1399
RICHARD MARK HILL,)	
)	
RESPONDENT.)	

This matter came on for hearing on the 14th and 15th days of November, 2000, before Christine Neighbors, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance ("Director"). The Nebraska Department of Insurance ("Department") was represented by its attorney, Linda Sanchez-Masi. Respondent Richard Mark Hill was present and represented by counsel, D. Kirk Wolgamott. Witnesses Garry Squier, Dale Manchester, and Charlotte Manchester gave testimony via telephone conference call. The Rules of Evidence were not requested and the hearing was governed accordingly. The proceedings were tape recorded by Stacey Bellefeuille, a licensed Notary Public. Evidence was introduced, and the matter was taken under advisement. As a result of the hearing, the Hearing Officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is a licensed resident insurance agent whose registered address with the Department is 401 Sante Fe Trail, Lincoln, Nebraska. Respondent has been a licensed resident insurance agent in Nebraska since 1979. At all times material

hereto, Respondent was an appointed agent with Conseco Medical Insurance Company (“Conseco”) and United American Insurance Company (“United American”) and was licensed to sell the lines of life and health and accident insurance.

2. The Department is the agency of the State of Nebraska charged with licensing insurance agents and brokers.

3. The Department filed an Amended Petition and Notice of Hearing on or about June 15, 2000 which was served upon Respondent by mailing the same to his address of record by certified mail, return receipt requested. Respondent received the Amended Petition and Notice of Hearing on June 20, 2000 as evidenced by the return receipt card.

4. The Department, in its amended petition, alleged various violations of Nebraska insurance law, specifically Neb. Rev. Stat. §44-4028 (5), (6), (11), and (17) which authorize the Director to revoke or suspend any person’s license if the Director determines that such person has:

- (5) Forged another person’s name to an application for insurance or to any other document;
- (6) Knowingly and willfully made a misrepresentation in or relative to an application for a policy of insurance;
- (11) Not demonstrated trustworthiness and competence to transact business in such a manner as to safeguard the public; and
- (17) Failed to respond to the Department within fifteen working days after receipt of an inquiry from the Department.

In addition, the amended petition alleges a violation of the Unfair Trade Practices Act, specifically Neb. Rev. Stat. §44-1525(10) which provides it shall be an unfair trade practice to make a false or fraudulent statement or representation on or relative to an

application for a policy for the purpose of obtaining a fee, commission, money, or other benefit from any individual person.

Garry Squier

5. On or about May 24, 2000, Respondent solicited Garry Squier to purchase United American cancer insurance but did not have the appropriate insurance application to complete. At Respondent's request, Mr. Squier signed a blank piece of paper and granted permission for Respondent to affix photocopies of his signature to an insurance application form at a later date. (Exhibits 6, 7). On or about May 26, 2000, Respondent affixed cut-out photocopies of Mr. Squier's signature to an insurance application, copied it, and submitted the application to his insurance agency to be forwarded to United American. (Exhibit 7). Respondent then placed the unused photocopied signatures in the trash at the copy center where they were discovered by a customer and forwarded to the police department on May 27, 2000. (Exhibits 3, 4, 6, 13). Respondent testified that he had not photocopied signatures before but, based on his years of experience, he believed photocopies would be accepted by the insurer. Affidavit testimony by Nan Neathery of United American contradicts Respondent's testimony as to the acceptability of such business practice. (Exhibit 5). The hearing officer finds that the use of Mr. Squier's signature was with his permission, consistent with the purpose permission was granted and in the manner represented by Respondent, and is not a forgery as Respondent lacked the intent to defraud. However, this conduct indicates that Respondent misrepresented the true nature of the application and has not demonstrated trustworthiness and competency to transact business in such a manner as to safeguard the public.

6. The United American cancer insurance application for Garry Squier contains the following statement, in pertinent part: “[t]he undersigned Agent certifies that the Applicant has read, or has had read to him, the completed application and that the Applicant realizes that any false statement or misrepresentation in the application may result in loss of coverage under the policy.” (Exhibit 7). Respondent affixed Mr. Squier’s photocopied signature to the insurance application and completed and submitted it to the company. Respondent did not allow Mr. Squier to read or review the application before it was submitted. The hearing officer finds that Respondent knowingly and willfully made a misrepresentation in or relative to an application for a policy of insurance by certifying to United American that Mr. Squier read or had read to him the completed application when, in fact, it was not true.

7. In addition to the purchase of United American cancer insurance, Mr. Squier applied for Conseco health insurance coverage from Respondent on May 24, 2000. Respondent represented to Mr. Squier that the Conseco health insurance coverage would be in effect June 6, 2000. In reliance on that representation and premium payment for coverage, Mr. Squier did not pay the monthly premium due his current health insurer assuming that his new coverage would be in effect. His coverage did not take effect as indicated by Respondent. Respondent failed to follow up on the status of the application which was never submitted to the insurer. Mr. Squier testified that he and his family were not without health insurance coverage because, after notification of an investigation, he paid his premium during a grace period on his former policy. However, if Mr. Squier had not been prompted by an investigation to reinstate his former health insurance policy

during the grace period, Mr. Squier and his family would have been without health insurance coverage.

Dale and Charlotte Manchester

8. On or about May 25, 2000, Respondent solicited Dale and Charlotte Manchester to purchase United American life insurance but did not have the appropriate insurance applications to complete. In response to Respondent's request, Mr. and Mrs. Manchester signed a blank piece of paper and granted permission for Respondent to affix photocopies of the signatures to insurance applications at a later date. (Exhibits 6, 8, 9). On or about May 26, 2000, Respondent affixed cut-out photocopies of Mr. and Mrs. Manchesters' signatures to insurance applications, copied them, and submitted the applications to his insurance agency to be forwarded to United American. (Exhibits 8, 9). Respondent then placed the unused photocopied signatures in the trash at the copy center where they were also discovered by a customer and forwarded to the police department on May 27, 2000. (Exhibits 3, 4, 6, 13). Respondent testified that he had not photocopied signatures before but, based on his years of experience, he believed photocopies would be accepted by the insurer. Affidavit testimony by Nan Neathery of United American contradicts Respondent's testimony as to the acceptability of such business practice. (Exhibit 5). The hearing officer finds that the use of Mr. and Mrs. Manchesters' signatures was with their permission, consistent with the purpose permission was granted and in the manner represented by Respondent, and is not a forgery as Respondent lacked the intent to defraud. However, this conduct indicates that Respondent misrepresented the true nature of the applications and has not demonstrated

trustworthiness and competency to transact business in such a manner as to safeguard the public.

9. Each insurance application to which Respondent photocopied and affixed the signatures of Mr. and Mrs. Manchester contained the following statement in relevant part,

“AGREEMENT: I hereby apply to United American Insurance Company for a policy to be issued solely and entirely in reliance upon the written answers to the foregoing questions, and I expressly agree on behalf of myself and any person who shall claim any interest in any policy issued on this application as follows: (1) All statements and answers contained herein are full, complete and true to the best of my knowledge and belief”
(Exhibits 8 and 9).

By completing and affixing the Manchesters’ photocopied signatures to the insurance applications Respondent completed, Respondent did not allow Mr. and Mrs. Manchester to review them. Thus, they did not truthfully attest to the language in the AGREEMENT portion of the insurance applications. An insurer relies on the accuracy of the information contained in the application form, specifically responses to health related questions, in order to determine whether insurance coverage will be issued to the applicant and to set the appropriate premium. The hearing officer finds that Respondent knowingly and willfully made a misrepresentation in or relative to an application for a policy of insurance by affixing the Manchesters’ signatures and submitting the application to United American.

10. Clearly, Respondent also misrepresented information regarding Dale Manchester’s health condition relative to the United American life insurance application

and completed the application without regard to accuracy. Dale Manchester testified that he has emphysema and, if Respondent had asked him Question 4(e) on the life insurance application, he would have told Respondent he has emphysema. (Exhibit 8). The “no” response to Question 4(e) is false. In addition, Mrs. Manchester testified that Respondent asked her age, social security number, and general health questions during the meeting. Respondent did not ask her the specific health related questions listed on the application. Respondent marked “no” to all questions listed in Paragraphs 1-5 on Exhibit 9.

11. Charlotte Manchester testified that she and Dale Manchester wrote separate checks on separate bank accounts to Respondent to pay the initial premiums for the insurance purchased from Respondent. In response to the police department telephone call regarding their photocopied signatures, the Manchesters stopped payment on the checks for insurance purchased from Respondent. As a result, Mr. and Mrs. Manchester incurred approximately \$100.00 in bank fees.

12. Despite the fact that Respondent has been a licensed insurance agent for over 20 years in the lines of life and health and accident insurance, Respondent, when questioned, admitted that he was unfamiliar with the products he offered clients on behalf of Conseco and United American. Respondent testified that he sold the Conseco and United American insurance products because he needed the money and that he expected to receive a commission from the sales. Respondent was not competent to sell the insurance products he marketed to Garry Squier, Dale Manchester, and Charlotte Manchester.

13. Since no evidence was offered on the alleged violation of Neb. Rev. Stat. §44-4028 (17), the hearing officer makes no findings on this issue.

CONCLUSIONS OF LAW

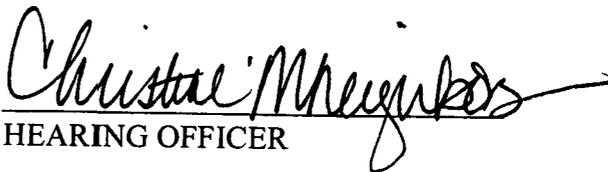
1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §44-4001 et seq.
2. The Department has personal jurisdiction over Respondent.
3. Respondent violated Neb. Rev. Stat. §44-4028 (6) and (11) as discussed in Paragraphs 5, 6, 7, 8, 9, 10, 11 and 12 above and incorporated herein.
4. Respondent did not violate Neb. Rev. Stat. §44-4028 (5). The elements of forgery are (1) the offering of a forged instrument with the representation by words or acts that it is true and genuine, (2) knowing the same to be false, forged or counterfeited, and (3) with intent to defraud. State v. Fox, 19 Neb. 424 (1974).
5. Respondent's conduct does not violate Neb. Rev. Stat. §44-1525 (10) as said conduct was not (1) committed in flagrant and in conscious disregard of the Unfair Insurance Trade Practices Act or any rule or regulation adopted pursuant to the act or (2) committed with such frequency as to indicate a general business practice to engage in that type of conduct as required by Neb. Rev. Stat. §44-1524.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the resident insurance agent license of Richard Mark Hill be suspended for the term of one (1) year and, in addition, Respondent be required to pay a \$500.00 administrative fine within forty-five (45) days of the date the Director of Insurance signs the Order. It is further recommended that Richard Mark Hill immediately surrender his license to the Nebraska Department of Insurance during the period of suspension.

Dated this 11th day of December, 2000.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


HEARING OFFICER

ORDER

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska Department of Insurance vs. Richard Mark Hill, Cause No. A-1399.

Dated this 13th day of December, 2000.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order and Order was served upon D. Kirk Wolgamott, Counsel for Respondent, 1007 South 16th Street, Lincoln, Nebraska 68508 via facsimile and U.S. Mail, postage prepaid on this 13th day of December, 2000.

